IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

JUDGMENT

D.B. CIVIL SPECIAL APPEAL (WRIT) NO. 868/2006.
In
S.B. CIVIL WRIT PETITION NO. 4192/1999.

Suresh Chand Yadav
Vs.
State of Rajasthan & Others

Date of Order:- September 7, 2007.

PRESENT

HON'BLE THE ACTING CHIEF JUSTICE MR. J.M. PANCHAL
HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Mr. Ashok Gaur for the appellant.
Mr. Harshvardhan Nandwana, Additional Government Advocate for the State.

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BY THE COURT:-

The instant appeal is directed against the common judgment dated February 17, 2004 rendered by the learned Single Judge in S.B. Civil Writ Petition No. 4192/1999 and other cognate matters by which the prayer made by the appellant to direct the respondents to give him appointment on the post of Physical Education Teacher in pursuance of the advertisement and

letter dated February 27, 1999, with all consequential benefits, is rejected.

2) The respondent No.1 issued an advertisement inviting applications from eligible candidates for the post of Teacher Gr.III. The appellant had passed the B.P.Ed. Examination from Nagpur University. In the advertisement, it was specified that the applicants should possess degree of Bachelor of Physical Education from institutions recognised by the National Council for Teachers Education. The degree conferred by Nagpur University was earlier not recognised by National Council for Teachers Education. As the appellant was not possessing the said qualification, his case for appointment to the said post was not considered. Therefore, he and others instituted different writ petitions in the High Court. The learned Single Judge vide common judgment dated February 17, 2004 dismissed the writ petitions. Feeling aggrieved, some of the petitioners filed appeals before the Division Bench. The Division Bench allowed the appeals vide judgment dated July 28, 2005 which is now

reported in **WLC (Raj.) 2005(4) 399 (Budhi Prakash Swarnkar & Ors. Vs. State of Rajasthan & Ors.).** The Division Bench after placing reliance on another Division Bench judgment in **Goverdhan Lal Kabra Teachers College Vs. Union of India & Ors. : 2001(1) WLC (Raj.) 176** has held that appellants were possessing the minimum qualification and, therefore, the learned Single Judge was not justified in dismissing the petitions. By the said judgment, Division Bench directed the respondents to consider the case of the appellants to appoint them on the post concerned if they were found otherwise eligible.

3) The learned counsel for the appellant has contended that the case of the appellant is fully covered by the judgment rendered in **Budhi Prakash Swarnkar & Ors. (supra)** and, therefore, the same relief should be granted to him

4) It may be mentioned that the appeal was placed for preliminary hearing before the court on November 17, 2006 and August 14, 2007 and after hearing the learned counsels, the learned Additional Government Advocate for respondents

No.1 & 2 was directed to file an additional affidavit indicating as to whether the posts were vacant or not.

5) Pursuant to the said direction, the respondents have filed additional affidavit indicating that two posts of Teacher Gr.III are vacant.

6) As the posts of Teacher Gr.III are vacant, this Court is of the opinion that interest of justice will be served if the same direction as was given by the Division Bench in the case of **Budhi Prakash Swarnkar & Ors. (supra)** is given in the case of the appellant.

7) For the foregoing reasons, the appeal partly succeeds. The judgment dated February 17, 2004 rendered by the learned Single Judge in S.B. Civil Writ Petition No.4192/1999 is set-aside.

8) The respondents No.1 and 2 are directed to consider the case of the appellant for appointment on the post of Teacher Grade-III and to appoint him if he is found otherwise eligible.

The appeal stands allowed to the extent

indicated hereinabove. There shall be no order as to costs.

(MOHAMMAD RAFIQ), J. (J.M PANCHAL), Actg. CJ.

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